

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	MB Docket No. 04-261
)	
Violent Television Programming)	
And Its Impact on Children)	

**COMMENTS OF
NATIONAL HOCKEY LEAGUE**

COMES NOW, the National Hockey League (hereafter sometimes “NHL”) and files these Comments in the Commission’s inquiry into violent television programming.

The NHL is a joint venture organized as an unincorporated not-for-profit association composed of thirty member clubs engaged in the business of creating, organizing, promoting and exhibiting through television and cable the sport of professional hockey.

In its Notice of Inquiry,¹ the Commission indicated that it was responding to Congressional inquiries about excessive broadcast violence. The FCC noted that a possible response to protecting children from “excessive violence” would be to create a late-night “safe harbor”² in which violent shows would be aired only at certain times at which children were not likely to comprise a significant portion of the viewing audience.

At the same time, however, the Commission recognized that it was a “difficult exercise” to distinguish “one form of violence from another based on context,”³ citing the National TV Violence Study, issued in 1997 by the UCLA Center for Communication Policy, which said “Whether to count...sports within a definition of violence is itself a difficult decision.”⁴

The National Hockey League feels that it is improper to even consider whether a sport like hockey would fall into any definition of televised “violence.” In the first place, even the legislation being considered by Congress recognizes that sports (and news) are *sui generis* and may be specifically exempted from the provisions of the proposed law.⁵ Second, any definition that would take into account the various team sports currently on television would be confusing legitimate sporting events with artificial events specifically created for their violent aspects (i.e., professional wrestling) or with certain events whose very nature is violent (i.e., boxing). Third, such a definition would ignore the critical point that rule-breaking violent

¹ FCC 04-175, released July 28, 2004

² Id. at para. 20.

³ Id. at para. 11.

⁴ Ibid.

⁵ See S. 161 at Section 715(b)(1), introduced by Sen. Hollings on January 16, 2003.

actions in hockey are punished (contrasted to the all-too-common response of rewarding violent action).⁶ Researchers have noted that when violent behavior is shown to be punished, it is less likely to be imitated than when it is rewarded.⁷ Fourth, to consider sports action as violent would ignore the absolutely critical issue of context in that televised sports do not have violence written into the event for its dramatic effect – a point that exists not only in primetime shows, but very often in cartoons. Fifth, general research is inconclusive as to the effect of televised “violence” – however that may be defined – on viewers. And finally, the Commission – as much as it wants to do what is “good” – should recognize that its attempt to regulate television “violence” is constitutionally suspect under First Amendment. See Winters v. New York, 333 U.S. 507 (1948); Brandenburg v. Ohio, 395 U.S. 444 (1969)(*per curiam*); United States v. Playboy Entertainment Group, 529 U.S. 803 (2000).

For practical, policy, and Constitutional reasons, the Commission should not attempt to adopt regulations affecting sports telecasts.

Respectfully submitted,

NATIONAL HOCKEY LEAGUE

/s/ Philip R. Hochberg
Philip R. Hochberg
Counsel

Law Offices of Philip R. Hochberg
11921 Rockville Pike, #300
Rockville, MD 20852

⁶ The NHL assesses penalties for violent behavior. For example, the “instigator rule” imposes an instigating two-minute minor penalty, a five-minute major penalty, and a ten-minute misconduct penalty to any player who is deemed to be the instigator of an altercation; the “third-man-in rule” automatically ejects any player who joins an altercation; and all players involved in an altercation are subject to addition – or “supplementary” -- discipline in the form of a suspension without pay.

⁷ Cantor, J. & Wilson, B.J. (2003). Media and Violence: Intervention strategies for reducing aggression. *Media Psychology*, 5, 363-403.